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From:

Sent: Thursday, April 01, 2010 2:59:47 PM

To:

Cc:

Subject: RE: ERISA question

The provision 29 USC 1104(b) that you are referring to is section 404(b) of ERISA, that provides that no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the District Courts of the U.S., except as authorized by the Secretary of Labor by regulation. The Department of Labor (DOL) promulgated such regulations at 29 C.F.R. § 2550.404b-1.

In the ERISA Conference Report, Congress noted its intent to prevent so-called "runaway assets" and stated that the basic objective of the requirement that the indicia of ownership remain within the jurisdiction of a United States District Court is to preclude frustration of adequate fiduciary supervision and remedies for breach of trust. However, the risk of misappropriation of plan assets and their removal beyond the effective process of an American court is minimal where the assets are under the **management or control** of a bank, trust company or similar institution which is subject to adequate regulation and examination by State or Federal supervisory agencies. Such an institution would be responsive to legal process and to traditional principles of fiduciary responsibility under trust law. See H.R. Rep. No. 93-1280, 93rd Cong., 2nd Sess., at 306 (1974) (emphasis added).

Attached is DOL Advisory Opinion 2008-04A (April 8, 2008) that discusses the application of section 404(b) of ERISA and the regulations at 29 C.F.R. § 2550.404b-1 as it applies to a fiduciary that is a bank. However, it should be noted that the fiduciary could also be an insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any asset of a plan or an investment adviser registered under the Investment Advisers Act of 1940. If you want to get a copy of 29 C.F.R. § 2550.404b-1 go to the following DOL website:
http://www.dol.gov/dol/allcfr/ebsa/Title_29/Part_2550/29CFR2550.404b-1.htm .

Because this is an ERISA item that is under the jurisdiction of DOL, they would be the better place to call to discuss the facts of your case. If you want me to set up a conference call with someone at DOL call me.